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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/789,644   | 02/27/2004  | Jay Brent DeShan     | 694231/0100         | 9158             |
| 32361  | 7590        | 10/09/2007           | EXAMINER            |                  |
| GREENBERG TRAURIG, LLP<br>MET LIFE BUILDING<br>200 PARK AVENUE<br>NEW YORK, NY 10166 |             |                      |                     | JEAN, FRANTZ B   |
| ART UNIT   |             | PAPER NUMBER         |                     |                  |
|  |             | 2154                 |                     |                  |
| NOTIFICATION DATE  |             |                      | DELIVERY MODE       |                  |
| 10/09/2007   |             |                      | ELECTRONIC          |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

SchindlerB@gtlaw.com  
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|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/789,644             | DESHAN ET AL        |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Frantz B. Jean         | 2154                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 February 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-52 and 56 is/are rejected.
- 7) Claim(s) 53-55 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

This is a first office action in response to application for patent filed on 02/27/04. claims 1-56 are presented for examination.

### *Claim Objections*

Claim 31 is objected to because of the following informalities: claim 31, at page 39 line 2, recites "URL f". Appropriate correction is required.

Furthermore, claims 53 and 54 and some other claims throughout the application recite "steaming server DNS". Correction is required.

### *Information Disclosure Statement*

The information disclosure statement (IDS) submitted on 02/27/ is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1- 7, 10- 30, 35-39, 41-52, and 56 are rejected under 35 U.S.C. 102(e) as being anticipated by Dalal et al. (hereinafter Dalal) US patent number 7,216,165 B2.

Dalal teaches a method for testing digital content (abstract) comprising: requesting a test data file (execute a command col. 6 lines 43-52); receiving the test data file, the test file identifying a streaming media server and digital content; locating the streaming media server identified in the test file data (see col. 4 line 55 to col. 5 line 2); locating the streaming media server (112, fig 1) identified in the test data file; requesting from the streaming server the digital content identified in the test data file (col. 5 lines 12-16); testing the playback operation of the digital content, wherein the testing generates a plurality of test results (col. 6 lines 14-27); and causing to be stored the plurality of test results in a storage device (col. 6 lines 14-27).

As per claim 2, Dalal discusses trace route test between client and streaming server and storing the result (col. 5 lines 48-57 and col. 6 lines 14-15).

As per claim 3, Dalal teaches performing bandwidth test between client and streaming server (see col. 6 lines 20—27).

As per claims 4-5, Dalal teaches calculating time to locate, connect to streaming media server and digital content (col. 2 lines 12-18; lines 30-43).

As per claim 6, Dalal teaches forwarding test results for analysis (col. 5 lines 17-31).

As per claim 7, Dalal teaches sorting test results based upon at least one category (col. 4 line 55 to col. 5 line 2; assessment server 102 determines what data to return to data collection points 106).

As per claim 10, Dalal teaches sorting the result based upon geographic region where client is located (col. 5 lines 47-57; using trace route).

As per claim 11, Dalal teaches monitoring digital content through a graphical interface (fig 2), the interface comprising: a first display configured to present real time communication between client test machine and streaming server (col. 5 lines 58-67); a second display window configured to display status of content test (col. 6 lines 1-17).

As per claim 12, Dalal teaches a third display window (see col. 5 lines 60-67).

Claims 13-18 are computer-readable medium that contain the same limitations as discussed in claims 1-12. Therefore, they are rejected under the same rationale.

Claims 20-27 contain the same limitations as discussed in claims 1-12.

Therefore, they are rejected under the same rationale.

As per claim 28, Dalal teaches a buffer (see col. 6 line 4).

As per claim 29, Dalal teaches statistical information (col. 6 line 21), therefore, Dalal performs mathematical algorithm.

As per claim 30, Dalal discloses report containing an analysis of test result (see abstract, report server 110).

As per claims 35-39 and 41-52 are already discussed in the rejection of the claim above. Therefore, they are rejected under the same rationale.

As per claim 56, Dalal teaches restoring test data files (col. 6 lines 14-17).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-9, 31-34, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dalal.

As per claims 8-9 and 33, Dalal teaches sending message for administrator and issuance of various reports to the system's sponsors (see col. 3 lines 59-61 and col. 4 lines 3-5). However, Dalal fails to teach sending message if percentage of error is greater than a predetermined threshold value; alert and sorting test results in descending order based upon a percentage error category. Official notice is taken that both the concept and advantages of using these features are well known in the art for protection and reliability purposes. One skill artisan at the time of the invention would incorporate these features in Dalal's to identify and correct faults in the system to prevent system failure.

As per claims 31-32, 40, Dalal substantially teaches all the limitations as discussed above. Furthermore, Dalal teaches applications server and network (see col. 5 line 60 to col. 6 line17). However, Dalal fails to explicitly disclose a URLthat identifies a digital content. Official notice is taken that this feature is well known and accepted in the art to identify object. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate a URL into Dalal to locate and identify object or content.

As per claim 34, Dalal teaches statistical information (col. 6 line21), therefore, Dalal performs mathematical algorithm.

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Claims 53-55 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 571-272-3937. The examiner can normally be reached on 8:30-6:00 M-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Frantz Jean



FRANTZ B. JEAN  
PRIMARY EXAMINER